

## **IC 23-1-45**

### **Chapter 45. Voluntary Dissolution**

#### **IC 23-1-45-1**

##### **Corporation that has not issued shares or commenced business**

Sec. 1. A majority of the incorporators or initial directors of a corporation that has not issued shares or has not commenced business may dissolve the corporation by delivering to the secretary of state for filing articles of dissolution that set forth:

- (1) the name of the corporation;
- (2) the date of its incorporation;
- (3) either:
  - (A) that none of the corporation's shares has been issued; or
  - (B) that the corporation has not commenced business;
- (4) that no debt of the corporation remains unpaid;
- (5) that the net assets of the corporation remaining after winding up have been distributed to the shareholders, if shares were issued; and
- (6) that a majority of the incorporators or initial directors authorized the dissolution.

*As added by P.L.149-1986, SEC.29.*

#### **IC 23-1-45-2**

##### **Proposal for dissolution; notice; adoption by shareholders**

Sec. 2. (a) A corporation's board of directors may propose dissolution for submission to the shareholders.

(b) For a proposal to dissolve to be adopted:

- (1) the board of directors must recommend dissolution to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders; and
- (2) the shareholders entitled to vote must approve the proposal to dissolve as provided in subsection (e).

(c) The board of directors may condition its submission of the proposal for dissolution on any basis.

(d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with IC 23-1-29-5. The notice must also state that the purpose, or one (1) of the purposes, of the meeting is to consider dissolving the corporation.

(e) Unless the articles of incorporation or the board of directors (acting under subsection (c)) require a greater vote or a vote by voting groups, the proposal to dissolve to be adopted must be approved by a majority of all the votes entitled to be cast on that proposal.

(f) After a proposal for dissolution is adopted, the corporation shall give the notices required by IC 6-8.1-10-9, IC 22-4-32-23, and IC 32-34-1-25.

*As added by P.L.149-1986, SEC.29. Amended by P.L.107-1987,*

*SEC.22; P.L.145-1988, SEC.6; P.L.31-1995, SEC.4; P.L.2-2002, SEC.73.*

### **IC 23-1-45-3**

#### **Filing of articles of dissolution; date of dissolution**

Sec. 3. (a) At any time after dissolution is authorized, the corporation may dissolve by delivering to the secretary of state for filing articles of dissolution setting forth the following:

- (1) The name of the corporation.
- (2) The date dissolution was authorized.
- (3) If dissolution was approved by the shareholders:
  - (A) the number of votes entitled to be cast on the proposal to dissolve; and
  - (B) either the total number of votes cast for and against dissolution or the total number of undisputed votes cast for dissolution and a statement that the number cast for dissolution was sufficient for approval.

If voting by voting groups is required, the information required by this subdivision shall be separately provided for each voting group entitled to vote separately on the plan to dissolve.

(b) A corporation is dissolved upon the effective date of its articles of dissolution.

*As added by P.L.149-1986, SEC.29.*

### **IC 23-1-45-4**

#### **Revocation of dissolution**

Sec. 4. (a) A corporation may revoke its dissolution within one hundred twenty (120) days of its effective date.

(b) Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action by the board of directors alone, in which event the board of directors may revoke the dissolution without shareholder action.

(c) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the secretary of state for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

- (1) the name of the corporation;
- (2) the effective date of the dissolution that was revoked;
- (3) the date that the revocation of dissolution was authorized;
- (4) if the corporation's board of directors (or incorporators) revoked the dissolution, a statement to that effect;
- (5) if the corporation's board of directors revoked a dissolution authorized by the shareholders, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and
- (6) if shareholder action was required to revoke the dissolution, the information required by section 3(a)(3) of this chapter.

(d) Unless a delayed effective date is specified, revocation of dissolution is effective when articles of revocation of dissolution are

filed.

(e) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its business as if dissolution had never occurred.

*As added by P.L.149-1986, SEC.29.*

#### **IC 23-1-45-5**

##### **Continuance of corporate existence; winding up affairs; effect of dissolution**

Sec. 5. (a) A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

- (1) collecting its assets;
- (2) disposing of its properties that will not be distributed in kind to its shareholders;
- (3) discharging or making provision for discharging its liabilities;
- (4) distributing its remaining property among its shareholders according to their interests; and
- (5) doing every other act necessary to wind up and liquidate its business and affairs.

(b) Dissolution of a corporation does not:

- (1) transfer title to the corporation's property;
- (2) prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records;
- (3) subject its directors or officers to standards of conduct different from those prescribed in IC 23-1-33 through IC 23-1-37;
- (4) change:
  - (A) quorum or voting requirements for its board of directors or shareholders;
  - (B) provisions for selection, resignation, or removal of its directors, or officers, or both; or
  - (C) provisions for amending its bylaws;
- (5) prevent commencement of a proceeding by or against the corporation in its corporate name;
- (6) abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or
- (7) terminate the authority of the registered agent of the corporation.

*As added by P.L.149-1986, SEC.29.*

#### **IC 23-1-45-6**

##### **Disposition of known claims; procedure**

Sec. 6. (a) A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.

(b) The dissolved corporation shall notify its known claimants in writing of the dissolution at any time after its effective date. The

written notice must:

- (1) specify the amount that the dissolved corporation believes will satisfy the claim;
- (2) inform the creditor that it has the right to dispute the amount of the claim and describe the procedure for disputing the amount of the claim;
- (3) provide a mailing address where a dispute of the amount of the claim may be sent;
- (4) state the deadline, which may not be fewer than sixty (60) days after the effective date of the written notice, by which the dissolved corporation must receive the dispute of the amount of the claim; and
- (5) state that the claim will be fixed at the amount specified by the dissolved corporation if a dispute of the amount of the claim is not received by the deadline.

(c) If the amount of the claim is disputed, the claimant must notify the dissolved corporation of the dispute by the deadline. If the dissolved corporation rejects the disputed amount, the claimant must commence a proceeding to enforce the claim within ninety (90) days after the effective date of the dissolved corporation's rejection notice.

(d) The amount of the claim is fixed if:

- (1) the claimant does not notify the dissolved corporation by the deadline; or
- (2) the claimant who has notified the dissolved corporation of a dispute and has received a rejection notice does not commence a proceeding within ninety (90) days from the effective date of the rejection notice.

(e) Regardless of a dispute in the amount of the claim, the dissolved corporation must tender to the claimant the amount of the claim as set forth by the dissolved corporation in the notice of claim within thirty (30) days after the earliest of the following dates:

- (1) The date that the claim becomes fixed.
- (2) The date that the claimant commences the proceeding to enforce the claim.

(f) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

*As added by P.L.149-1986, SEC.29.*

### **IC 23-1-45-7**

#### **Notice of dissolution; claims against dissolved corporation**

Sec. 7. (a) A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.

(b) The notice must:

- (1) be published one (1) time in a newspaper of general circulation in the county where the dissolved corporation's principal office (or, if none in Indiana, its registered office) is or was last located;
- (2) describe the information that must be included in a claim

and provide a mailing address where the claim may be sent; and  
(3) state that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within two (2) years after the publication of the notice.

(c) If the dissolved corporation publishes a newspaper notice in accordance with subsection (b), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim within two (2) years after the publication date of the newspaper notice:

(1) A claimant who did not receive written notice under section 6 of this chapter.

(2) A claimant whose claim was timely sent to the dissolved corporation but not acted on.

(3) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(d) A claim may be enforced under this section:

(1) against the dissolved corporation, to the extent of its undistributed assets; or

(2) if the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of the shareholder's pro rata share of the claim or the corporate assets distributed to the shareholder in liquidation, whichever is less, but a shareholder's total liability for all claims under this section may not exceed the total amount of assets distributed to the shareholder.

*As added by P.L.149-1986, SEC.29. Amended by P.L.75-1990, SEC.3.*